

THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

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In re: Alleged Violations of Tenn. Code Ann.)
§ 65-4-401, et seq. and Rules of Tennessee)
Regulatory Authority Consumer Services)
Division Chapter 1220-4-11)

GutterGuard of Tennessee, Inc.)

Consumer Services Division

File No. T02-00297

T02-00378

T02-00424

T02-00469

T02-00514

T02-00532

T02-00535

T02-00555

T02-00584

DOCKET NO.

03-00082

MOTION TO QUASH

GutterGuard of Tennessee, Inc. ("GutterGuard"), hereby moves the Tennessee Regulatory Authority, or any tribunal into which it is currently haled or that may have jurisdiction over this matter, for an Order quashing the subpoena *duces tecum* issued by the TRA on or about January 15, 2003 for the following reasons:

1. GutterGuard objects to request Number 1 in that this request is enormously overbroad and unduly burdensome. Except as otherwise provided herein, GutterGuard does not have or maintain, nor is GutterGuard required to create documents that it does not have, or that are not kept in the ordinary course of business. To require GutterGuard to compile "all telephone billing records for all phones," GutterGuard would be required to gather records of hundreds of thousands of telephone calls made over an 8-month period from more than 30 telephone lines. This process would require hundreds of man-hours and subject GutterGuard to considerable expense and unnecessary interruption of its business. However, without waiving its

objection, GutterGuard states that it has long distance billing records for the Nashville office and has attached a copy of those records to its response.

2. GutterGuard further objects to the items set forth in request Number 1 in that the requested documents irrelevant. GutterGuard concedes that, except for the phone call which is the subject of Claim No. 2-00532, the phone calls in question were made and GutterGuard will stipulate accordingly. GutterGuard contends that except for Claim No. 2-00532, the calls were made unknowingly and accidentally, notwithstanding the establishment by GutterGuard of reasonable practices and procedures to effectively prevent telephone solicitations as set forth in Tenn. Code Ann. § 65-4-408, providing a complete defense to the claims made by the TRA against GutterGuard.

3. Request numbers 2 and 3 are overbroad and irrelevant. Tenn. Code Ann. § 65-4-401 *et seq.* does not provide for individual liability for telephone solicitors. Therefore, the identity of the GutterGuard employees who made the calls in question is irrelevant to the disposition of these claims.

WHEREFORE, for the foregoing reasons, GutterGuard respectfully requests that this subpoena *duces tecum* be quashed.

Submitted this 30th day of January, 2003.

Respectfully submitted,



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Counsel for GutterGuard of Tennessee, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 30TH of January, 2003, a true and accurate copy of the foregoing document was served by U.S. Mail, postage prepaid, upon J. Richard Collier, General Counsel, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, Tennessee 37243.

